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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

USA CAPITAL REALTY ADVISORS,  
LLC,

USA CAPITAL DIVERSIFIED TRUST  
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED  
FUND, LLC,<sup>1</sup>

USA SECURITIES, LLC,<sup>2</sup>

Debtors.

**Affects:**

- ☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR<sup>1</sup>  
Case No. BK-S-06-10729-LBR<sup>2</sup>

**CHAPTER 11**

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**OBJECTION OF USACM TRUST TO  
PROOFS OF CLAIM BASED, IN  
WHOLE OR IN PART, UPON  
INVESTMENT IN STANDARD  
PROPERTY DEVELOPMENT, LLC  
LOAN; AND CERTIFICATE OF  
SERVICE**

Date of Hearing: February 5, 2010

Time of Hearing: 9:30 a.m.

The USACM Liquidating Trust (the "USACM Trust") moves under § 502 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order disallowing the Proof of Claim filed by individual investors ("Direct Lenders") against USA

<sup>1</sup> This bankruptcy case was closed on October 12, 2007.

<sup>2</sup> This bankruptcy case was closed on December 26, 2007.

1 Commercial Mortgage Company (“USACM”) to the extent such claims are based upon an  
2 investment in the Standard Property Development, LLC Loan (the “Standard Property  
3 Loan”). This Objection is supported by the Court’s record and the Declaration of Edward  
4 M. Burr in Support of Omnibus Objections to Proofs of Claim Based Upon the Investment  
5 in the Standard Property Development, LLC Loan filed with the Court on April 29, 2008  
6 [DE 6276] (the “Burr Decl.”).

7 **I. INTRODUCTION**

8 On March 20, 2007, the borrower paid off the Standard Property Development  
9 Loan in full. In turn, USACM distributed the proceeds to the Direct Lenders who were  
10 paid in full, subject to servicing fees and any other charges under their respective Loan  
11 Servicing Agreements and this Court’s orders, including the Confirmation Order. This  
12 Objection seeks an order from the Court disallowing Direct Lender claims to the extent  
13 they are based upon an investment in the Standard Property Loan. To the extent a Direct  
14 Lender claim is based upon an investment in a different loan, it will not be impacted by  
15 this Objection.

16 **II. JURISDICTION**

17 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and  
18 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
19 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

20 The statutory predicate for the relief requested herein are 11 U.S.C. § 502 and  
21 Bankruptcy Rule 3007.

22 **III. BACKGROUND**

23 On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA  
24 Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital  
25 Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC  
26 (“FTDF,” together with DTDF, the “Funds”) (collectively, the “Debtors”), filed voluntary

1 petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate  
2 their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of  
3 the Bankruptcy Code. Debtors' post-petition management of the Debtors was under the  
4 direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
5 ("Mesirow"), who served as the Chief Restructuring Officer.

6 USACM was a Nevada corporation that, prior to the Petition Date, was in the  
7 business of underwriting, originating, brokering, funding and servicing commercial loans  
8 primarily secured by real estate, both on behalf of investors and for its own account. That  
9 business included the solicitation of individual investors to purchase fractional interest in  
10 loans that USACM originated and then serviced. These investors, totaling approximately  
11 3,600 as of the Petition Date, are referred to as "Direct Lenders" in USACM's bankruptcy  
12 case and in this Objection. Although USACM serviced and sometimes originated the  
13 loans in which the Direct Lenders invested, generally USACM was not a borrower on  
14 these loans.

15 On January 8, 2007, this Court entered its Order Confirming the "Debtors' Third  
16 Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.  
17 2376] (the "Confirmation Order"). Under the Plan, the USACM Trust is the successor to  
18 USACM with respect to standing to seek allowance and disallowance of Claims. The  
19 USACM Trust exists as of the Effective Date of the Plan, which was March 12, 2007.  
20 Geoffrey L. Berman is the Trustee.

21 The spreadsheet attached as **Exhibit A** lists Proofs of Claim filed by Direct Lenders  
22 that appear to be based, in whole or in part, upon an investment in the Standard Property  
23 Loan. **Exhibit A** shows the Proof of Claim number, the claimant, the claimant's address,  
24 the total amount of the claim and the total amount of the claim that appears to be related to  
25 an investment in the Standard Property Loan based upon the information provided by the  
26

1 claimant. The claims listed in **Exhibit A** are referred to hereafter as the Standard  
2 Property Claims. A copy of the first page of the proof(s) of claim listed on **Exhibit A** is  
3 attached as **Exhibit B**.

4 On or about March 20, 2007, the Standard Property Loan was paid off in full, as  
5 reflected in USACM's books and records. (Burr Decl. ¶ 8.) Shortly thereafter, USACM  
6 processed the payoff and distributed the proceeds to the Direct Lenders on the Standard  
7 Property Loan. *Id.* The Direct Lenders were in turn paid in full for their investment in the  
8 Standard Property Loan, subject to servicing fees and any other charges under their  
9 respective Loan Servicing Agreements and this Court's orders, including the Confirmation  
10 Order. (Burr Decl. ¶ 9.) In general, the Direct Lenders received their principal and  
11 interest on the Standard Property Loan, less sums withheld for servicing fees, servicer  
12 advances, Prepaid Interest and sums known as the 2% Holdback pursuant to the confirmed  
13 Plan. *Id.* On the Effective Date of the Plan, the Prepaid Interest was applied, a portion of  
14 the 2% Holdback was applied to the allowed claims of the Direct Lender Committee, and  
15 the balance paid to the Direct Lenders. *Id.* Accordingly, the USACM Trust no longer has  
16 further obligations to the Direct Lenders arising out of the Standard Property Loan. (Burr  
17 Decl. ¶ 10.)

#### 18 **IV. OBJECTION**

19 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed  
20 will be allowed unless a party in interest objects. If a party in interest objects to the proof  
21 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and  
22 shall allow the Claim except to the extent that the Claim is "unenforceable against the  
23 debtor . . . under any . . . applicable law for a reason other than because such claim is  
24 contingent or unmatured." 11 U.S.C. § 502(b). The USACM Trust is entitled to object to  
25 proofs of claim under 11 U.S.C. § 502(a). This objection is timely under the confirmed  
26

1 Plan, as the deadline for such objections has been extended to February 5, 2010, by this  
2 Court's orders.

3 The USACM Trust objects to the Standard Property Claim and requests that the  
4 Court disallow the claims listed in **Exhibit A** to the extent those claims are based upon a  
5 Direct Lender investment in the Standard Property Loan because the Direct Lenders were  
6 paid in full on their investments in Standard Property Loan. The USACM Trust asks that  
7 the Court sustain this objection and grant such other and further relief as is just and proper.

8 Dated: January 7, 2010.

9 LEWIS AND ROCA LLP

10  
11 By /s/ John C. Hinderaker

12 Rob Charles, NV 6593

13 John C. Hinderaker, AZ 18024 (*pro hac vice*)

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19 *Attorneys for the USACM Liquidating Trust*

20 Copy of the foregoing and pertinent  
21 Portion of Exhibit A and Exhibit B  
22 mailed by first class  
23 Postage prepaid U.S. mail  
24 On January 7, 2010 to:

25 All parties in interest listed on  
26 Exhibit A attached

/s/ Leilani Lista

Leilani Lista

Lewis and Roca LLP